

Delaware Energy Office

Delaware Sustainable Energy Utility
Fiscal Agent

Request for Proposals

March 9, 2009

SCHEDULE

RFP Released on:	March 9, 2009
Bidder's conference	March 23, 2009
Statement of Intent	March 27, 2009
Questions Submitted	March 30, 2009
Questions Answered	April 3, 2009
Proposal Due Date	April 17, 2009
Bidder Presentations	April 24, 2009
Contract Negotiations	April 30, 2009
Contract Execution	May 15, 2009

TABLE OF CONTENTS

1.0	INTRODUCTION	1
1.1	Purpose of This Request for Proposals	1
1.2	Term of Contract	1
1.3	Statutory Authority	1
1.4	Overview of Institutional Structure	1
1.5	Mandatory Requirements	4
1.6	Legislative and Regulatory Appearances	4
2.0	SCOPE OF SERVICES	5
2.1	Mission and Objectives	5
2.2	Funding for the SEU	5
2.3	Responsibilities and Duties	6
2.4	Financial Management	6
2.5	Information Technology, Data Collection and Management	7
3.0	FA COMPENSATION AND PERFORMANCE INCENTIVES	8
3.1	FA Compensation	8
3.2	Performance Incentives	8
4.0	RESPONSE FORMAT AND PROPOSAL REQUIREMENTS	9
4.1	Financial Management	9
4.2	Administration	9
4.3	Organizational and Management Capability	9
5.0	PROPOSAL EVALUATION	10
5.1	Selection Process	10
5.2	Evaluation Criteria	10
6.0	INSTRUCTIONS FOR BIDDERS AND RFP RULES	11
6.1	RFP Responses Due Date and Schedule	11
6.2	Bidder's Conference and Questions to the DEO	11
6.3	Statement of Intent to Respond	11
6.4	Bidder Presentations and Negotiations	11
6.5	Proposal Delivery	11
6.6	Bidder Contacts	12
6.7	Proposal Modifications	12
6.8	Proprietary Information	12
6.9	Amendment or Cancellation of RFP	13
6.10	Proposal Costs and Expenses	13
6.11	Proposal Expiration Date	13
6.12	Late Proposals	13
6.13	Proposal Opening	13
6.14	Non-Conforming Proposals	13
6.15	Concise Proposals	13
6.16	Realistic Proposals	13
6.17	Multi-Bidder Solutions (Joint Ventures)	14
6.18	Discrepancies or Omissions	14
6.19	Right to Reject Proposals	14
6.20	Amendment or Cancellation of RFP	15
6.21	Right to Cancel the Solicitation	15
6.22	Right to Award Multiple Source Contracting	15
6.23	Notification of Withdrawal of Proposal	15
6.24	Revisions to the RFP	15
6.25	Exceptions to the RFP	15

7.26 Award of Contract	15
7.0 CONTRACT TERMS AND CONDITIONS	17
7.1 General Information	17
7.2 Collusion or Fraud	17
7.3 Lobbying and Gratuities	17
7.4 Solicitation of State Employees	18
7.5 General Contract Terms	18
Appendix A: Fiscal Agent Bidder's Conference Form.....	22
Appendix B: Fiscal Agent Intent to Respond Form	23
Appendix C: Standard Department Contract Terms and Conditions	24

1.0 INTRODUCTION

1.1 Purpose of This Request for Proposals

The State of Delaware Energy Office (the “DEO”) as part of the Department of Natural Resources and Environmental Control (the “Department”) issues this Request for Proposals (RFP) to solicit competitive proposals for a Fiscal Agent for the Delaware Sustainable Energy Utility. The purpose of the Sustainable Energy Utility is to acquire end-user energy savings and renewable energy solutions that can lower customers’ bills and reduce the environmental impacts of energy production, delivery, and use. The Fiscal Agent will manage the funds of the Sustainable Energy Utility. The Fiscal Agent will operate under a contract initiated by the DEO on behalf of the Sustainable Energy Utility, a non-profit entity created by Delaware law. The contract will be co-signed by the Secretary of Natural Resources and Environmental Control and the State Energy Coordinator. A copy of the Department’s standard contract is exhibited in Appendix C of this document. Since the Sustainable Energy Utility is not a State agency, the Fiscal Agent will not be required to adhere to all State contracting procedures.

This document presents the project objectives, terms and conditions, specific deliverables, and the required format to submit a proposal to the DEO. Potential bidders should read the entire RFP carefully, along with its Appendices in order to gain a clear understanding of the project requirements. Potential bidders should review the Sustainable Energy Utility’s website (<http://www.seu-de.org>) which has a variety of background documents on the development of the Sustainable Energy Utility. Potential Bidders should also review the DEO’s RFP for the SEU Contract Administrator which contains detailed information about the SEU and expected programs.

1.2 Term of Contract

The winning bidder of this RFP will provide the full scope of services described within this document, for a four year period commencing with contract execution. This contract may be renewed at the DEO option for another three year period.

1.3 Statutory Authority

This RFP is promulgated under authority of 29 Delaware Code, Section 8059.

1.4 Overview of Institutional Structure

Potential Bidders need to understand the roles and responsibilities of the Delaware Sustainable Energy Utility, Delaware Energy Office, Sustainable Energy Utility Oversight Board, Contract Administrator, Fiscal Agent, and Implementation Contractors.

The Delaware Sustainable Energy Utility (“SEU”) is the non-profit entity tasked by the State of Delaware to operate programs to deliver comprehensive end-user energy efficiency and customer-sited renewable energy services to Delaware’s households and businesses. A Contract Administrator will manage the SEU’s programs under a contract initiated by the DEO under the direction of the State Energy Coordinator. Routine administration of the SEU shall be performed by the Contract Administrator. The SEU is designed by the State of Delaware to leverage public and private funds and to utilize special purpose bond proceeds

(see below for details regarding the SEU's bond authority) to fulfill the goal of comprehensive, affordable sustainable energy services provided to energy users regardless of conventional fuel type or end use. Any bidder for the Fiscal Agent cannot be affiliated with a utility, public or private, that operates in Delaware, or any agency of the State of Delaware, or any entity providing power or fuel to Delaware's distribution utilities or residents.

The State of Delaware Energy Office ("DEO") is the operable unit within the Department tasked by Delaware law to propose and implement a number of energy-related initiatives including energy efficiency, energy conservation, and customer-sited renewable energy programs. The DEO has a number of responsibilities relating to the development, implementation, and monitoring of the SEU including (but not limited to):

- Generation of RFPs for the Contract Administrator and Fiscal Agent that detail the roles of each contractual position;
- Hiring and terminating (if appropriate) the Contract Administrator and Fiscal Agent;
- Development of criteria for evaluation of bid proposals and the annual reporting requirements;
- Defining performance incentives such that if the SEU exceeds program targets by 120% it shall receive a bonus, and if the SEU achieves less than 80% of program targets it shall be charged a penalty. By written agreement between the DEO and the SEU, performance incentives may be passed through to implementation contractors when the DEO and SEU decide this is in the best interest of the State's development of sustainable energy resources;
- Reporting biannually to the SEU Oversight Board on the progress of the SEU;
- Management of the Contract Administrator and Fiscal Agent contracts;
- Development of appropriate means to issue Renewable Energy Certificates and Solar Renewable Energy Certificates, as defined in Title 26 § 352 of the Delaware Code, for renewable energy technologies sited in Delaware;
- Ensuring continuity of program implementation and sufficient carry-over funding during the transition period between the end of one SEU contract term and the beginning of another SEU contract term, so that Delawareans may still have regular access to sustainable energy services during transitional periods;
- Ensuring that adequate evaluation, monitoring, and verification mechanisms are in place so that:
 - The Energy Office and Oversight Board can verify that both SEU and Implementation Contractor expenditures result in verifiable energy savings over the expected lifetime of each energy-saving measure.
 - The CA and implementation contractors are held responsible for the energy savings reportedly achieved through program activities and expenditures

The DEO is headed by the State Energy Coordinator, who is specifically and exclusively tasked by Delaware law to provide direction to the CA and the FA.

The SEU Oversight Board ("the Board") is comprised of public, non-profit, academic, and private sector representatives that sets performance targets for the SEU's programs and monitors overall effectiveness. The Board reviews and approves: RFPs for the Contract

Administrator and Fiscal Agent; annual and contract-term SEU performance targets recommended by the Contract Administrator; and any proposed modifications to SEU performance targets or program designs during the contract term of the Contract Administrator. The Board also contracts with an independent professional agency to monitor and verify results reported by the Contract Administrator in annual and contract-term reports, receives biannual reports from the DEO, and may offer recommendations to the DEO regarding the management of the SEU.

The SEU Contract Administrator ("CA") will manage the day-to-day functions and responsibilities of the SEU. The CA's chief responsibilities are program research and design, administration of the Implementation Contracts, and oversight to ensure the Implementation Contractors meet appropriate performance and budgetary targets. The CA may implement education and public outreach programs with approval of the DEO. All other SEU programs must be delivered by competitively selected Implementation Contractors. A full description of the CA roles is found in the RFP.

The SEU Fiscal Agent ("FA") is an independent contractor who assists the DEO with the financial management of the SEU. The FA is the SEU's "Treasury." The FA will be contracted by fee only by the DEO. The FA's primary responsibilities are: to receive funds for the SEU; disburse these funds to the CA under the direction of the DEO; interface with revenue authorities; oversee financial transactions involving renewable energy certificates; develop and maintain accounting system and pay SEU invoices.

An SEU Implementation Contractor ("IC") means any entity competitively contracted by the SEU to implement specific programs and services. Any entity, including individuals, electricity or gas utilities, local governments, non-profit corporations, and private businesses, may bid for an Implementation Contract. Entities affiliated with the CA are prohibited from bidding for any of the Implementation Contractor positions.

The ultimate responsibility for oversight of the CA and the ICs resides with the State Energy Coordinator and the Board. This structure is intended to protect not only the SEU's independence, but also to assure that its performance is continually and closely monitored and that it always has the strongest incentives to operate as efficiently as possible. A legal analysis of the responsibilities of the principals of this institutional structure is available at: http://www.seu-de.org/docs/minutes/2008_SEU%20Oversight%20Board_Legal%20Analysis_FINAL_F%20Murphy.pdf

1.5 Mandatory Requirements

Mandatory Requirements are explicitly stated within this RFP. Bidders should consider the following general mandatory requirements prior to deciding to respond to this RFP.

- 1.5.1** To maintain independence between each of the administrative functions, any FA bidder and any bidder's affiliates, shall not concurrently hold or be awarded the CA contract.

- 1.5.2** The FA must be prepared to operate in an independent capacity and not as officers or employees of the State.
- 1.5.3** The FA must agree to contract with the State of Delaware for a period of four (4) years with an optional renewal of (3) three years. The FA contract must be rebid through an RFP process after two consecutive terms by one contractor. For the purposes of this RFP, a consecutive term includes the optional renewal of 3 years.
- 1.5.4** The transition to a new FA at the end of a winning bidder's contract term must be performed in an organized and efficient manner with a minimum of disruption to the CA, SEU members, ICs, and SEU programs.
- 1.5.5** Due to the size of the SEU budget and the potential liabilities surrounding the project services, the selected bidder is required to provide general liability insurance coverage. This general liability insurance coverage must not exclude professional judgment. Upon the completion of contract execution with the DEO, the bidder must acquire this insurance coverage in the amount of \$5,000,000.00 and must provide a copy of its insurance certificate to the DEO.

1.6 Legislative and Regulatory Appearances

The FA may be asked to provide testimony to the Delaware General Assembly, regulatory agencies or other forums. Bidders should expect that the DEO's contract with the FA will include guidelines regarding the provision of testimony to prevent confusion regarding whether testimony is being presented on behalf of the SEU or the winning bidder as an independent company.

2.0 SCOPE OF SERVICES

2.1 Mission and Objectives

The FA's primary mission is to assist the Energy Office with the financial management of the SEU. The FA will act as the SEU's "Treasury."

2.2 Funding for the SEU

The current primary funding resources for working capital for the SEU are special purpose bonds and state revenues from the sale of CO2 allowances associated with Delaware's participation in the Regional Greenhouse Gas Initiative. Revenue sources contributing to the SEU for the purpose of paying off bond debt service and helping the SEU to grow will include but are not limited to shared savings and other savings-focused agreements and partial proceeds from the sale of REC's in local and regional markets. Other funding resources are or may become available that may allow different program design and incentive levels. These funds can be evaluated for leveraging in accordance with the rules governing their use and can include, but are not limited to: federal and state tax credits, other bonds, federal and state grants (e.g., federal weatherization funds which can be supplemented by SEU funds), charitable or other grants.

2.2.1 Bonds

The SEU, with the assistance of the CA and the Bond Financing Team selected by the SEU Oversight Board expects to issue a series of bonds, tax-exempt if eligible.

Information on the Bond Counsel and Bond Underwriter can be obtained at www.seu-de.org/SEUOVERSIGHTBOARD.html.

It is anticipated that the SEU will enter the capital markets for its inaugural financing in the second quarter of 2009. The proceeds generated from bond financing shall only be used to fund the capital requirements and incentives necessary to meet the program goals as determined by the oversight board. Bond monies will not fund the FA, or internal DEO responsibilities or staff, or the Board's budget that is specified in 29 Delaware Code, Section 8059. All bond monies will be held and disbursed by the FA. The State of Delaware's general funds shall not be liable for the repayment of the SEU debt obligations.

2.2.2 Regional Greenhouse Gas Initiative Revenues

The SEU is, under 7 Del Code, provided with 65% of the revenues from the state's sale of RGGI CO2 allowances. Allowances are sold at quarterly auctions and transfer of these state dollars to the SEU FA will be made within 15 business days following settlement of the auction and deposit of auction proceeds in the state's RGGI account. It is not possible to accurately or consistently predict the amount of money to be made available to the SEU from the sale of these allowances, however, DNREC has estimated revenues for calendar year 2009 to be in the \$6-9 million range, and will vary depending on allowance prices. The duration of RGGI allowances and revenues is similarly difficult to predict. The program is slated to continue through 2019, and revenues would be expected to rise through that period, however federal climate change legislation may pre-empt the RGGI program or otherwise alter the potential revenues.

2.3 Responsibilities and Duties

The primary responsibilities, services, and business functions of the FA are:

- 2.3.1** Receive funds for the SEU from the funding sources outlined in section 2.2; disburse these funds to the CA under the direction of the DEO; receive funds from SEU participants who may be repaying monies in a shared-savings program and keep accurate records of any and all transactions;
- 2.3.2** Interface with bonding and revenue authorities;
- 2.3.3** Make timely debt service payments;
- 2.3.4** Oversee financial transactions involving RECs and possible Solar Lifeline activities (see 29 Delaware Code, Section 8059, section (i) (2));
- 2.3.5** Pay SEU invoices;
- 2.3.6** Review and monitor the SEU's budget that will be developed by the CA and provide any requested information to the DEO, the Board, and the CA on financial and budgetary matters; and
- 2.3.7** Provide any necessary financial information to the CA for SEU reports and Annual Plans.
- 2.3.8** Prepare monthly financial statements for Board review within 15 working days after month end and within 90 days of fiscal year end (including notes) according to Generally Accepted Accounting Principles (GAAP).

2.4 Financial Management

The FA will develop, implement, and maintain the necessary budgeting, invoicing, expenditure approval, and financial accounting systems to review, approve, and track budgets, invoices, and payments to the CA. It must maintain financial and accounting records consistent with Generally Accepted Accounting Principles of the United States set forth by the Governmental Accounting Standards Board. All invoicing data along with proper supporting documentation must be kept by the FA and made available to the DEO upon request. The FA will provide annual audited financial statements to the State Department of Finance, Division of Accounting no later than September 30 each year, based upon a financial fiscal year ended June 30.

All funds transferred or revenue streams supplied by the State of Delaware must be segregated from other operational funds so they are traceable and auditable for specific purposes so designated, including Energy Answers funds and state RGGI funds. The books and records for these funds must be reconcilable to the accounts transferred from the State financial system.

2.5 Information Technology, Data Collection and Management

The FA must develop and maintain an information management system that at a minimum is capable of its responsibilities and duties described in this RFP. The financial system and all financial data must be maintained within the Committee of Sponsoring Organizations of the Treadway Commission (COSO) framework for observance of proper internal controls and segregation of duties.

2.5.1 SEU Data and Property

Financial data collected by the FA will be the property of the SEU and must be kept in a relational database and organized in such a way that a third party could easily utilize necessary information for performing assessment and audit tasks. In addition, the system must have the ability to produce *ad hoc* reports for periodic information requests from the DEO or the Board.

The types of CPUs, storage peripherals, communication devices, network equipment, software, printers and any other products necessary for the SEU financial management system are to be chosen by the bidder, must have the capabilities to perform the necessary tasks set forth in this section of the RFP, and must be configured so that additional elements can be added without undue hardship, cost, or difficulty. The FA will be required to transfer such items to the winning bidder of a future FA RFP.

Any logos, trademarks, databases, copyrighted material or material eligible for copyright, physical equipment, computer software purchased or developed with SEU monies, surveys, survey results, program designs, and any SEU work product determined by the Board to be necessary to the success of SEU programs will be the property of the SEU and used only with permission of the DEO and the Board.

2.5.2 Managing SEU Participant and Competitively Sensitive Information

The FA must develop and maintain protocols that provide appropriate privacy protections in the collection, processing, storage and retrieval of information that is participant-specific. Additional protocols for competitively sensitive information must be developed and maintained so that such information is protected and no ICs are provided unfair competitive advantages.

3.0 FA COMPENSATION AND PERFORMANCE INCENTIVES

The structure of the SEU is different from other programs operated by states, utilities, and local governments. The SEU will operate more like a business than a governmental agency:

3.1 FA Compensation

The DEO has not predetermined a particular compensation model and will allow bidders to explain in detail how the FA will be compensated in their proposal. Possible compensation models include:

- Time and materials with an annual or four-year cap.
- Costs plus a fixed fee.

Bidders may propose a different model than the ones cited above.

3.2 Performance Incentives

The DEO is not proposing nor necessarily encouraging bidders to include performance incentives in their proposals. However, bidders may propose relevant and appropriate performance incentives for the FA.

4.0 RESPONSE FORMAT AND PROPOSAL REQUIREMENTS

Bidders are required to present their proposals in accordance with this Section. Proposals should be prepared simply and economically to provide a concise description of the bidder's approach and capabilities for satisfying the required services outlined in this RFP. Bidders should address any and all anticipated difficulties and/or problem areas along with potential approaches to their resolution.

4.1 Financial Management

Bidders' proposals must detail the tools and mechanisms they will employ to fulfill FA responsibilities and duties.

4.2 Administration

Bidders should prepare a proposed work plan that describes how they will accomplish the tasks set forth in the Scope of Services.

4.3 Organizational and Management Capability

Bidders are required to demonstrate the capability of their company/organization to perform the services described in this RFP.

4.3.1 Bidder Qualifications and Experience of Key Personnel

Bidders shall describe their firm and/or team's experience. Bidders shall identify key personnel to be assigned to this project, describe their primary responsibilities, and include résumés that describe the individuals' experience and qualifications. Bidders should also provide an estimate of assigned hours of key personnel on the project by task set forth in the Scope of Services.

4.3.2 Client References

Bidders should provide references from previous (or current) clients for whom they have performed projects that are relevant to the Scope of Services. References should include specific services provided, company name and location, contact name, contact title, telephone number and, where available, email address. In the event the bidder is forming a new organization to bid on this proposal, the bidder should provide the related references for the key staff members.

4.3.3 Management Structure

In this section, bidders must describe the business structure under which they typically operate (i.e., for-profit corporation, not-for-profit corporation, partnership, etc.). If a new organizational structure is planned by a bidder for operation of the SEU, that structure should be described fully and clearly.

5.0 PROPOSAL EVALUATION

5.1 Selection Process

Overall, bidders' proposals will be evaluated in light of the statutory goals and the general good of the State. Bidder proposals will be initially evaluated by an RFP Screening Committee ("Committee") consisting of the State Energy Coordinator and other public or private individuals chosen by the State Energy Coordinator. The Committee will rank bidder proposals using a percentage weighting system. Each proposal will be scored individually. Once the proposals are evaluated, the Committee will interview up to five bidders with the highest ranking scores and assess each bidder's ability to perform the tasks outlined in their proposals.

Based on the interview/oral presentation, the Committee may revise their ranking of the proposals. The Committee will submit its review to the DEO with a recommendation on the candidates.

The Committee's recommendation will not be binding on the DEO. The DEO will review the Committee's recommendation and may, at its sole discretion, choose to further review and evaluate any and/or all bidder proposals before making the final decision or make no decision and rebid the same RFP or an amended RFP.

5.2 Evaluation Criteria

The RFP Screening Committee and the DEO will base their evaluation of bids on the following basic criteria:

- Demonstrated Competence, Experience, and Qualifications; 100%.

6.0 INSTRUCTIONS FOR BIDDERS AND RFP RULES

6.1 RFP Responses Due Date and Schedule

Responses are due for this RFP on **April 17, 2009 by no later than 4:30 p.m. EDT**. Other important dates for this RFP are listed below.

RFP Released on:	March 9, 2009
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Questions Answered	April 3, 2009
Proposal Due Date	April 17, 2009
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Contract Negotiations	April 30, 2009
Contract Execution	May 15, 2009

6.2 Bidder's Conference and Questions to the DEO

The DEO will hold a Bidder's Conference on March 23, 2009 at 10:00 a.m. at the Delaware Energy Office – Conference Room. A call-in number will be provided for those who cannot attend the conference in person. Bidders may ask questions in writing or email until March 30, 2009. Questions should be addressed to the State Energy Coordinator as shown in section 6.5 below. Responses will be provided by April 3, 2009. The DEO response to each question will be compiled into one document listing questions and answers. The DEO will send this completed question and answer document to all persons and organizations who have submitted "Intent to Respond" forms and also post them on the DEO and SEU websites.

6.3 Statement of Intent to Respond

All that intend to respond to the RFP should submit the "Intent to Respond" form below by March 27, 2009. The Intent to Respond form is not mandatory but will be useful for the DEO to gauge the potential number of RFP respondents.

6.4 Bidder Presentations and Negotiations

Up to five proposals may be selected for an interview and the bidder may be requested to provide a presentation on their proposal. Based on the interview and presentation, the Committee may revise their ranking of the proposals. The DEO will conduct negotiations with the winning bidder.

6.5 Proposal Delivery

Bidders should provide an electronic version and deliver one original hard copy and 5 copies of their proposals to:

Charlie T. Smisson, Jr.
State Energy Coordinator
Delaware Energy Office
1203 College Park Drive, Suite 101

Dover, DE 19904
charlie.smisson@state.de.us

6.6 Bidder Contacts

The proposal should provide the name, title, address, telephone number, facsimile number and email of the bidder contact person(s) responsible for clarifying proposal content and for approving any agreement (or agreement amendment) with the DEO.

6.7 Proposal Modifications

Any changes, amendments or modifications to a proposal must be made in writing, submitted in the same manner as the original response and conspicuously labeled as a change, amendment or modification to a previously submitted proposal. Changes, amendments or modifications to proposals shall not be accepted or considered after the hour and date specified as the deadline for submission of proposals.

6.8 Proprietary Information

Bids will be treated as proprietary except for summaries prepared by the DEO. Bid summaries will be based on the following:

- Each bidder's submissions of compliance with the Mandatory Requirements in Section 1.5
- Each bidder's submissions regarding the defined Scope of Services of the contract.
- Each bidder's submissions responding to items listed in Section 6.2.

The filing of proprietary information is permitted. However, bidders must comply with the following procedures in relation to submitted proprietary information. If a bidder believes it necessary to include proprietary material in a bid, all such materials must be submitted in a separate sealed envelope and marked "CONFIDENTIAL."

It will not be sufficient for bidders to merely state generally that the proposal is proprietary in nature and not therefore subject to release to third parties. Particular pages or sections which a bidder believes to be proprietary or of a trade secret nature must be specifically identified as such and must be separated from other sections or pages of their proposal. A convincing explanation and rationale sufficient to justify exemption must accompany the proposal and must conform to the Department's FOIA Regulation found at <http://regulations.delaware.gov/AdminCode/title7/100/102.shtml#TopOfPage>. Bidders must understand and agree that final discretion to release summary information on bids rests with the Secretary of the Department.

Summaries of bids complying with the RFP will be open for public review. Any interested person or party may review the summaries at the DEO's office between the hours of 9:00 AM and 4:00 PM for a specified period. Summaries will also be posted on the SEU Oversight Board webpage – www.seu-de.org and the DEO web page – www.energy.dnrec.delaware.gov.

6.9 Amendment or Cancellation of RFP

The DEO reserves the right to void an application if the information requested is not received within the prescribed timeframe or is inadequate or incomplete. The DEO reserves the right to amend or cancel this RFP at any time.

6.10 Proposal Costs and Expenses

The DEO will not pay any costs incurred by any bidder associated with any aspect of responding to this solicitation, including proposal preparation, printing or delivery, attendance at bidder's conference, system demonstrations or negotiation process.

6.11 Proposal Expiration Date

Prices quoted in the proposal shall remain fixed and binding on the bidder at least through May 30, 2009. The DEO reserves the right to ask for an extension of time if needed.

6.12 Late Proposals

Proposals received after the specified date and time will not be accepted or considered. To guard against premature opening, sealed proposals shall be submitted, plainly marked with the proposal title, bidder name, and time and date of the proposal opening. Evaluation of the proposals is expected to begin shortly after the proposal due date. To document compliance with the deadline, the proposal will be date and time stamped upon receipt.

6.13 Proposal Opening

The DEO will receive proposals until the date and time shown in this RFP. Proposals will be opened only in the presence of DEO personnel. Any unopened proposals will be returned to the submitting bidders.

There will be no public opening of proposals but a public log will be kept of the names of all organizations that submitted proposals. The contents of any proposal shall not be disclosed to competing bidders prior to contract award.

6.14 Non-Conforming Proposals

Non-conforming proposals will not be considered. Non-conforming proposals are defined as those that do not meet the requirements of this RFP. The determination of whether an RFP requirement is substantive or a mere formality shall reside solely within the DEO.

6.15 Concise Proposals

The DEO discourages overly lengthy and costly proposals. It is the desire that proposals be prepared in a straightforward and concise manner. Unnecessarily elaborate brochures or other promotional materials beyond those sufficient to present a complete and effective proposal are not desired. The DEO's interest is in the quality and responsiveness of the proposal.

6.16 Realistic Proposals

It is the expectation of the DEO that bidders can fully satisfy the obligations of the proposal in the manner and timeframe defined within the proposal. Proposals must be realistic and must represent the best estimate of time, materials and other costs including the impact of

inflation and any economic or other factors that are reasonably predictable. The DEO shall bear no responsibility or increase obligation for a bidder's failure to accurately estimate the costs or resources required to meet the obligations defined in the proposal.

6.17 Multi-Bidder Solutions (Joint Ventures)

Multi-bidder solutions (joint ventures) will be allowed only if one of the venture partners is designated as the "prime contractor". The "prime contractor" must be the joint venture's contact point for the DEO and be responsible for the joint venture's performance under the contract, including all project management, legal and financial responsibility for the implementation of all the bidder's systems. If a joint venture is proposed, a copy of the joint venture agreement clearly describing the responsibilities of the partners must be submitted with the proposal. Further, the bidder shall be and remain liable for all damages to the State of Delaware caused by negligent performance or non-performance of work by its subcontractor or its sub-subcontractor.

Multi-bidder proposals must be a consolidated response with all cost included in the cost summary. Where necessary, RFP response pages are to be duplicated for each bidder.

The DEO expects to negotiate and contract with only one "prime bidder". The DEO will not accept any proposals that reflect an equal teaming arrangement or from bidders who are co-bidding on this RFP. The prime bidder will be responsible for the management of all subcontractors. Any contract that may result from this RFP shall specify that the prime bidder is solely responsible for fulfillment of any contract with the State as a result of this procurement. Payments to any-subcontractors are the sole responsibility of the prime bidder (awarded bidder).

6.17.1 Sub-Contracting

The bidder selected shall be solely responsible for contractual performance and management of all subcontract relationships. This contract allows subcontracting assignments; however, bidders assume all responsibility for work quality, delivery, installation, maintenance, and any supporting services required by a subcontractor.

Use of subcontractors must be clearly explained in the proposal. **The prime bidder shall be wholly responsible for the entire contract performance whether or not subcontractors are used.**

6.17.2 Multiple Proposals

A primary bidder may not participate in more than one proposal in any form. Subcontracting bidders may participate in multiple joint venture proposals

6.18 Discrepancies or Omissions

The bidder is fully responsible for the completeness and accuracy of their proposal, and for examining this RFP and all addenda. Failure to do so will be at the sole risk of bidder.

6.19 Right to Reject Proposals

The DEO reserves the right to accept or reject any or all proposals or any part of any

proposal, to waive defects, technicalities or any specifications (whether they be in the DEO's specifications or the bidder's response), to sit and act as sole judge of the merit and qualifications of each product offered, or to solicit new proposals on the same project or on a modified project which may include portions of the originally proposed.

6.20 Amendment or Cancellation of RFP

The DEO reserves the right to void an application if the information requested is not received within the prescribed timeframe or is inadequate or incomplete. The DEO reserves the right to amend or cancel this RFP at any time.

6.21 Right to Cancel the Solicitation

The DEO reserves the right to cancel this solicitation at any time during the procurement process, for any reason or for no reason. The DEO makes no commitments expressed or implied, that this process will result in a business transaction with any bidder.

This RFP does not constitute an offer by the DEO. The bidder's participation in this process may result in the DEO selecting your organization to engage in further discussions and negotiations toward execution of a contract. The commencement of such negotiations does not, however, signify a commitment by the DEO to execute a contract nor to continue negotiations. The DEO may terminate negotiations at any time and for any reason, or for no reason.

6.22 Right to Award Multiple Source Contracting

The DEO may award a contract for a particular professional service to two or more bidders if the DEO makes a determination that such an award is in the best interest of the SEU.

6.23 Notification of Withdrawal of Proposal

The bidder may modify or withdraw its proposal by written request, provided that both proposal and request is received by the DEO prior to the proposal due date. Proposals may be re-submitted in accordance with the proposal due date in order to be considered further.

Proposals become the property of the DEO at the proposal submission deadline. All proposals received are considered firm offers at that time.

6.24 Revisions to the RFP

If it becomes necessary to revise any part of the RFP, an addendum will be posted on the DEO's website at www.energy.dnrec.delaware.gov. The DEO is not bound by any statement related to this RFP made by any State of Delaware employee, contractor or its agents.

6.25 Exceptions to the RFP

Any exceptions to the RFP, or the Department's terms and conditions, must be highlighted and included in writing in the proposal. Acceptance of exceptions is within the sole discretion of the evaluation committee.

6.26 Award of Contract

The final award of a contract is subject to approval by the DEO. The DEO has the sole right to select the successful bidder(s) for award, to reject any proposal as unsatisfactory or non-responsive, to award a contract to other than the lowest priced proposal, to award multiple contracts, or not to award a contract, as a result of this RFP.

Notice in writing to a bidder of the acceptance of its proposal by the DEO and the subsequent full execution of a written contract will constitute a contract, and no bidder will acquire any legal or equitable rights or privileges until the occurrence of both such events.

7.0 CONTRACT TERMS AND CONDITIONS

7.1 General Information

- 7.1.1** The selected bidder will be required to enter into a written agreement with the DEO. Bidders will be required to sign the contract for all services, and may be required to sign additional agreements.
- 7.1.2** The selected bidder or bidders will be expected to enter negotiations with the DEO, which will result in a formal contract between parties. Procurement will be in accordance with subsequent contracted agreement. This RFP and the selected bidder's response to this RFP will be incorporated as part of any formal contract.
- 7.1.3** The contract will most likely be supplemented with the bidder's software license, support/maintenance, source code escrow agreements, and any other applicable agreements. The terms and conditions of these agreements will be negotiated with the finalist during actual contract negotiations. A copy of the standard contract is located in Appendix C, which is provided for illustrative purposes and may be modified during contract negotiations.
- 7.1.4** If the bidder to whom the award is made fails to enter into the agreement as herein provided, the award will be annulled, and an award may be made to another bidder. Such bidder shall fulfill every stipulation embraced herein as if they were the party to whom the first award was made.

7.2 Collusion or Fraud

Any evidence of agreement or collusion among bidder(s) and prospective bidder(s) acting to illegally restrain freedom from competition by agreement to offer a fixed price, or otherwise, will render the offers of such bidder(s) void. By responding, the bidder shall be deemed to have represented and warranted that its proposal is not made in connection with any competing bidder submitting a separate response to this RFP, and is in all respects fair and without collusion or fraud; that the bidder did not participate in the RFP development process; and that no employee or official of the State of Delaware participated directly or indirectly in the bidder's proposal preparation.

Advance knowledge of information which gives any particular bidder advantages over any other interested bidder(s), in advance of the opening of proposals, whether in response to advertising or an employee or representative thereof, will potentially void that particular proposal.

7.3 Lobbying and Gratuities

Lobbying or providing gratuities shall be strictly prohibited. Bidders found to be lobbying, providing gratuities to, or in any way attempting to influence a State of Delaware employee or agent of the State of Delaware concerning this RFP or the award of a contract resulting from this RFP shall have their proposal immediately rejected and shall be barred from further participation in this RFP.

The selected bidder will warrant that no person or selling agency has been employed or retained to solicit or secure a contract resulting from this RFP upon agreement or understanding for a commission, or a percentage, brokerage or contingent fee. For breach or violation of this warranty, the DEO shall have the right to annul any contract resulting from this RFP without liability or at its discretion deduct from the contract price or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

All contact with State of Delaware employees, contractors or agents of the State of Delaware concerning this RFP shall be conducted in strict accordance with the manner, forum and conditions set forth in this RFP.

7.4 Solicitation of State Employees

Until contract award, bidders shall not, directly or indirectly, solicit any employee of the State of Delaware to leave the State of Delaware's employ in order to accept employment with the bidder, its affiliates, actual or prospective contractors, or any person acting in concert with bidder, without prior written approval of the State of Delaware's contracting officer. Solicitation of State of Delaware employees by a bidder may result in rejection of the bidder's proposal.

This paragraph does not prevent the employment by a bidder of a State of Delaware employee who has initiated contact with the bidder. However, State of Delaware employees may be legally prohibited from accepting employment with the contractor or subcontractor under certain circumstances. Bidders may not knowingly employ a person who cannot legally accept employment under state or federal law. If a bidder discovers that they have done so, they must terminate that employment immediately.

7.5 General Contract Terms

7.5.1 Independent Contractors

The parties to the contract shall be independent contractors to one another, and nothing herein shall be deemed to cause this agreement to create an agency, partnership, joint venture or employment relationship between parties. Each party shall be responsible for compliance with all applicable workers compensation, unemployment, disability insurance, social security withholding and all other similar matters. Neither party shall be liable for any debts, accounts, obligations or other liability whatsoever of the other party or any other obligation of the other party to pay on the behalf of its employees or to withhold from any compensation paid to such employees any social benefits, workers compensation insurance premiums or any income or other similar taxes.

7.5.2 Licenses and Permits

In performance of the contract, the bidder will be required to comply with all applicable federal, state and local laws, ordinances, codes, and regulations concerning licenses and permits. The cost of permits and other relevant costs required in the performance of the contract shall be borne by the successful bidder. The bidder shall be properly licensed and authorized to transact business in the State of Delaware as provided in 30 *Del. C.* § 2502.

Prior to receiving an award, the successful bidder shall either furnish the State of Delaware with proof of State of Delaware Business Licensure or initiate the process of application where required. An application may be requested in writing to: Division of Revenue, Carvel State Building, P.O. Box 8750, 820 N. French Street, Wilmington, DE 19899 or by telephone to one of the following numbers: (302) 577-8200—Public Service, (302) 577-8205—Licensing Department.

Information regarding the award of the contract will be given to the Division of Revenue. Failure to comply with the State of Delaware licensing requirements may subject the bidder to applicable fines and/or interest penalties.

7.5.3 Penalties

The DEO may include in the final contract penalty provisions for non-performance, such as liquidated damages.

7.5.4 Termination for Cause

If for any reasons, or through any cause, the successful bidder fails to fulfil in timely and proper manner his obligations under the contract, or violates any of the covenants, agreements or stipulations of the contract, the DEO shall thereupon have the right to terminate the contract by giving written notice to the successful bidder of such termination and specifying the effective date thereof, at least twenty (20) days before the effective date of such termination. In that event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs and reports or other material prepared by the successful bidder under the contract shall, at the option of the DEO, become its property, and the successful bidder shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials which is useable to the DEO.

7.5.5 Termination for Convenience

The DEO may terminate the contract at any time by giving written notice of such termination and specifying the effective date thereof, at least twenty (20) days before the effective date of such termination. In that event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs and reports or other material prepared by the successful bidder under the contract shall, at the option of the DEO, become its property, and the successful bidder shall be entitled to compensation for any satisfactory work completed on such documents and other materials which is useable to the DEO. If the contract is terminated by the DEO as so provided, the successful bidder will be paid an amount which bears the same ratio to the total compensation as the services actually performed bear to the total services of the successful bidder as covered by the contract, less payments of compensation previously made. Provided however, that if less than 60 percent of the services covered by the contract have been performed upon the effective date of termination, the successful bidder shall be reimbursed (in addition to the above payment) for that portion of actual out of pocket expenses (not otherwise reimbursed under the contract) incurred by the successful bidder during the contract period which are directly attributable to the uncompleted portion of the services covered by the contract.

7.5.6 Non-Discrimination

In performing the services subject to this RFP, the successful bidder will agree that it will not discriminate against any employee or applicant for employment because of race, creed, color, sex or national origin. The successful bidder shall comply with all federal and state laws, regulations and policies pertaining to the prevention of discriminatory employment practice. Failure to perform under this provision constitutes a material breach of contract.

7.5.7 Covenant against Contingent Fees

The successful bidder will warrant that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement of understanding for a commission or percentage, brokerage or contingent fee excepting bona-fide employees, bona-fide established commercial or selling agencies maintained by the bidder for the purpose of securing business. For breach or violation of this warranty the DEO shall have the right to annul the contract without liability or at its discretion to deduct from the contract price or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

7.5.8 Contract Documents

The RFP, the purchase order, the executed contract and any supplemental documents between the DEO and the successful bidder shall constitute the contract between the DEO, SEU and the bidder. In the event there is any discrepancy between any of these contract documents, the following order of documents governs so that the former prevails over the latter: contract, RFP, bidder's response to the RFP and purchase order. No other documents shall be considered. These documents will constitute the entire agreement between the DEO and the successful bidder.

7.5.9 Applicable Law

The laws of the State of Delaware shall apply, except where Federal Law has precedence. The successful bidder consents to jurisdiction and venue in the State of Delaware.

In submitting a proposal, bidders certify that they comply with all federal, state and local laws applicable to its activities and obligations including:

- (1) the laws of the State of Delaware;
- (2) the applicable portion of the Federal Civil Rights Act of 1964;
- (3) the Equal Employment Opportunity Act and the regulations issued there under by the federal government;
- (4) a condition that the proposal submitted was independently arrived at, without collusion, under penalty of perjury; and
- (5) that programs, services, and activities provided to the general public under resulting contract conform with the Americans with Disabilities Act of 1990, and the regulations issued there under by the federal government.

If any successful bidder fails to comply with (1) through (5) of this paragraph, the DEO

reserves the right to disregard the proposal, terminate the contract, or consider the successful bidder in default.

The successful bidder shall keep itself fully informed of and shall observe and comply with all applicable existing Federal and State laws, and County and local ordinances, regulations and codes, and those laws, ordinances, regulations, and codes adopted during its performance of the work.

7.5.10 Scope of Agreement

If the scope of any provision of the contract is determined to be too broad in any respect whatsoever to permit enforcement to its full extent, then such provision shall be enforced to the maximum extent permitted by law, and the parties hereto consent and agree that such scope may be judicially modified accordingly and that the whole of such provisions of the contract shall not thereby fail, but the scope of such provisions shall be curtailed only to the extent necessary to conform to the law.

7.5.11 RFP Miscellaneous Information

7.5.11.1 No Press Releases or Public Disclosure

Bidders may not release any information about this RFP. The DEO reserves the right to pre-approve any news or advertising releases concerning this RFP, the resulting contract, the work performed, or any reference to the DEO with regard to any project or contract performance. Any such news or advertising releases pertaining to this RFP or resulting contract shall require the prior express written permission of the DEO.

7.5.11.2 Definitions of Requirements

To prevent any confusion about identifying requirements in this RFP, the following definition is offered: The words *shall*, *will* and/or *must* are used to designate a mandatory requirement. Bidders must respond to all mandatory requirements presented in the RFP. Failure to respond to a mandatory requirement may cause the disqualification of your proposal.



Appendix A: Fiscal Agent Bidder's Conference Form

The individual/organization named below intends to attend a pre-submission conference at 10:00 a.m. on March 23, 2009 at the Delaware Energy Office conference room located at 1203 College Park Drive, Suite 101, Dover, Delaware 19904 or at another designated location.

Individual/Organization Name: _____

Attendees: _____

Contact Name: _____

Title: _____

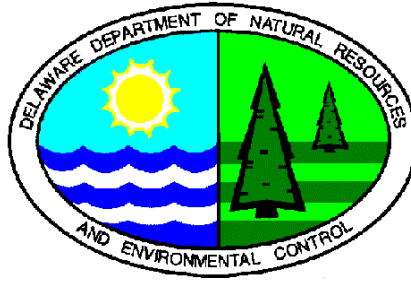
Contact Signature: _____

Date: _____

Submit Via E-mail, Fax, or Mail to:

Attn: Charlie T. Smisson, Jr.
State Energy Coordinator
Delaware Energy Office
1203 College Park Drive, Suite 101
Dover, Delaware 19904
Facsimile number: 302-739-1840

Please RSVP for the Bidder's by submitting this form before 4:30 p.m. March 20, 2009.



Appendix B: Fiscal Agent Intent to Respond Form

The company/organization named below intends to submit a proposal in response to the Delaware Energy Office's Request for Proposals for a Fiscal Agent for the Delaware Sustainable Energy Utility.

Individual/Organization Name: _____

Address: _____

Authorized Representative

Name: _____

Title: _____

Date: _____

Contact Information

Name: _____

Title: _____

Telephone Number: _____

E-mail: _____

Submit this form on or before 4:30 p.m. (EDT) on March 27, 2009 by Via Email, Fax or Mail to:

Attn: Charlie T. Smisson, Jr.
State Energy Coordinator
1203 College Park Drive, Suite 101
Dover, Delaware 19904
Facsimile number: 302-739-1840
Charlie.Smisson@state.de.us



Appendix C: Standard Department Contract Terms and Conditions

The Department is aware that this contract may require modification based on the unique requirements of the Sustainable Energy Utility. The SEU is not intended to be a “State” entity; however, the Department must ensure adequate oversight of the SEU and the FA through the DEO is in place. Exceptions or modifications to the standard contract may be discussed during contract negotiations once a contract is awarded or upon specific request of any of the bidders prior to contract award. All questions posed and answers given will be supplied to all bidding parties. Standard State procurement procedures may not apply for the purpose of this contract.

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL CONTRACT FOR PROFESSIONAL SERVICES

THIS CONTRACT, is made by **[CORPORATE OR OTHER LEGAL NAME(S)]** “CONTRACTOR” and the Department of Natural Resources and Environmental Control (“DEPARTMENT”), as follows:

1. Service Contract.

DEPARTMENT agrees to pay CONTRACTOR and CONTRACTOR agrees to perform certain technical or professional services.

2. Scope of Services.

[DESCRIBE IN DETAIL.]

3. Data Furnished to CONTRACTOR.

DEPARTMENT shall furnish all information, data, reports, records, and maps as existing, available, easily retrievable and necessary for the execution of the work to CONTRACTOR, without charge by DEPARTMENT, and DEPARTMENT shall reasonably cooperate with CONTRACTOR in carrying out the work.

4. Personnel.

A. CONTRACTOR represents that it has, or will secure at its own expense, all personnel required in performing the services under this Contract.

- B. CONTRACTOR, or persons under CONTRACTOR'S supervision, shall perform all of the services required by this Contract, and all personnel engaged in the work shall be fully qualified and shall be authorized to perform such services.
- C. CONTRACTOR shall not subcontract any of the work or services covered by this Contract without the prior written approval of DEPARTMENT.

5. Time of Performance.

The services of CONTRACTOR are to commence as soon as practicable after the execution of this Contract and shall be undertaken in such sequence as to assure their expeditious completion in the light of the purposes of this Contract, but in any event all of the services required by this CONTRACT shall be completed no later than **[DATE]**. Time is of the essence in this Contract.

6. Total Cost and Compensation.

- A. It is agreed that the total cost for the services provided under this Contract shall not exceed **[Amount due under Contract.]**.
- B. CONTRACTOR is responsible for costs incurred in excess of the total cost of this Contract and DEPARTMENT is not liable for such costs.
- C. Condition Precedent: The rights and obligations of each party to this Contract are not effective and no party is bound by the terms of this Contract unless and until a valid executed purchase order is approved by the Secretary of Finance and received by CONTRACTOR. The rights and obligations of DEPARTMENT under this Contract are limited to the amount of any approved purchase order.

Obligations and Payment.

- D. The obligations of the DEPARTMENT under this Contract shall be subject to the receipt of sufficient funds appropriated by the General Assembly and the obligations of the DEPARTMENT are limited to the amount of such appropriation.
- E. A first payment, in the amount of **[\$]**, shall be made upon satisfactory completion, in DEPARTMENT'S sole discretion, of **[DESCRIBE IN DETAIL]** and upon submission of an invoice by CONTRACTOR. A second payment, in the amount of **[\$]**, shall be made upon satisfactory completion, in DEPARTMENT'S sole discretion, of **[DESCRIBE IN DETAIL]** and upon submission of an invoice by CONTRACTOR. Invoices shall be paid within 30 days after receipt by DEPARTMENT, if services are performed satisfactorily, in DEPARTMENT'S sole discretion.
- F. The obligations of each party to this Contract are not effective and no party is bound by the terms of this Contract unless and until a valid executed purchase order has been approved by the Secretary of finance, and all the procedures of the Department of Finance have been complied with.
- G. CONTRACTOR will maintain accurate financial records and make them available to Federal and State auditors, as needed, up to 3 years following Contract termination.

7. Contractor and Subcontractor Agreements

CONTRACTOR shall indemnify, save and hold harmless and defend the DEPARTMENT, its directors employees, representatives or agents against any demand, claim, suit, loss, costs, or damages sustained in connection with performance of services provided under this agreement.

CONTRACTOR shall require each and every contractor or subcontractor for the project to indemnify, save and hold harmless, and defend the DEPARTMENT, its directors, employees, representatives, or agents against any demand, claim, suit, loss, costs, or

damages sustained in connection with performance of services provided under this agreement.

8. Termination of Contract for Cause.

If, for any reasons, or through any cause, CONTRACTOR shall fail to fulfill in timely or proper manner its obligations under this Contract, or if CONTRACTOR shall violate any of the covenants, agreements, or stipulations of this Contract, DEPARTMENT shall then have the right to terminate this Contract by giving written notice to CONTRACTOR of such termination and specifying the effective date, at least 5 days before the effective date of such termination. In that event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports or other material prepared by CONTRACTOR under this Contract shall, at the option of DEPARTMENT, become its property, and CONTRACTOR shall be entitled to receive reasonable compensation as determined by DEPARTMENT in its sole discretion for any satisfactory work completed on such documents and other materials which is usable to DEPARTMENT. Whether such work is satisfactory and usable is determined by DEPARTMENT in its sole discretion.

9. Publication, Reproduction and Use of Material.

No material produced in whole or in part under this Contract shall be subject to copyright in the United States or in any other country. DEPARTMENT shall have unrestricted authority to publish, disclose, distribute and otherwise use, in whole or in part, any reports, data, or other materials prepared under this Contract. CONTRACTOR shall have the right to publish any and all scientific findings. Appropriate acknowledgment and credit for DEPARTMENT'S support will be given in the publication.

10. Assignment of Antitrust Claims.

As consideration for the award and execution by DEPARTMENT of this Contract, CONTRACTOR hereby grants, conveys, sells, assigns, and transfers to the State of Delaware all of its right, title and interest in and to all known or unknown causes of action it presently has or may now or hereafter acquire under the antitrust laws of the United States and the State of Delaware, relating to the particular goods or services purchased or acquired by DEPARTMENT or CONTRACTOR pursuant to this Contract.

11. Audit; Access to Records:

CONTRACTOR shall maintain books, records, documents and other evidence directly pertinent to performance on EPA grant work under this Contract in accordance with generally accepted accounting principles and practices. CONTRACTOR shall also maintain the financial information and data used by CONTRACTOR in the preparation or support of the cost submission, and a copy of the cost summary submitted to DEPARTMENT. The United State's Department of Labor, DEPARTMENT (and the State of Delaware) or any of their duly authorized representatives shall have access to such books, records, documents and other evidence for the purpose of inspection, audit and copying. CONTRACTOR will provide proper facilities for such access and inspection.

12. Subcontracts:

Any subcontractors and outside associates or consultants required by CONTRACTOR in connection with the services covered by this Contract will be limited to such individuals or firms as were specifically identified and agreed to in writing during negotiations, or as are specifically authorized in writing by DEPARTMENT during the performance of this Contract. Any substitutions in or additions to such subcontractors, associates, or consultants will be subject to the prior written approval of DEPARTMENT.

13. Equal Employment Opportunity:

CONTRACTOR agrees that it will not discriminate against any employee or applicant for employment because of race, religion, color, sex, age or national origin.

14. Utilization of Small and Minority Business:

CONTRACTOR agrees that qualified small business and minority business enterprises shall have the maximum practicable opportunity to participate in the performance of EPA grant-assisted contracts and subcontracts.

15. DEPARTMENT'S Responsibilities. DEPARTMENT shall:

- A. Examine and review in detail all letters, reports, drawings and other documents presented by CONTRACTOR to DEPARTMENT and render to CONTRACTOR in writing findings and decisions pertaining thereto within a reasonable time so as not to delay the services of CONTRACTOR.
- B. Give prompt written notice to CONTRACTOR whenever DEPARTMENT observes or otherwise becomes aware of any development that affects the scope or timing of CONTRACTOR'S services.

16. The Parties Agree:

- A. The laws of the State of Delaware shall apply to the construction and operation of this Contract.
- B. This contract is the entire agreement between the CONTRACTOR and the DEPARTMENT and supersedes any prior agreement, whether oral or written, between the CONTRACTOR or any predecessor of the CONTRACTOR and the DEPARTMENT. It may be altered only by a written agreement signed by the CONTRACTOR and the DEPARTMENT. The CONTRACTOR's rights and obligations under this agreement will be binding on the CONTRACTOR's successors and assigns.
- C. The CONTRACTOR shall not assign any interest in this Contract, and shall not transfer any interest in it, without the prior written consent of the DEPARTMENT.

**STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES
AND ENVIRONMENTAL CONTROL**

David Small, Acting Secretary

[COMPANY NAME]

By: [Name of Person Signing]
Title: [Title of Person Signing]